BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2013-42-S

IN RE: Application of Palmetto Utilities, Inc. for adjustment of rates and charges for the provision of sewer service.	)	**PALMETTO UTILITIES, INC.'S RETURN TO PETITION FOR REHEARING OR RECONSIDERATION**

Palmetto Utilities, Inc. ("PUI") submits this return in opposition to the October 7, 2013, petition for rehearing or reconsideration of Commission Order No. 2013-660 ("Petition") which has been filed by Sensor Enterprises, Inc. d/b/a McDonald's and J-Ray, Inc. ("Intervenors"), in the above-captioned matter.

The Intervenors purport to state eight (8) separate grounds for rehearing or reconsideration. PUI submits that the Intervenors' contentions are without merit and that their petition for rehearing or reconsideration should therefore be denied for the following reasons:

1. Paragraph 2 of the Petition fails to state any basis for rehearing or reconsideration for several reasons. First, and as is the case with many of the contentions made by the Intervenors, this portion of the Petition suggests that the Commission should have set a rate specifically for the Intervenors. As noted in Order No. 2013-660, it was incumbent upon the Intervenors to establish that special circumstances or conditions existed which would warrant a rate design specifically for the Intervenors and they failed in meeting that burden. *See* Order No. 2013-660, at 27, n.11, *citing August Kohn & Co. v. Public Service Commission*, 281 S.C. 28, 313

S.E.2d 630 (1984). The Intervenors' petition advances no reason why the Commission's order was in error in that regard. Second, a just and reasonable rate is one which is arrived at after the Commission adopts and applies a ratemaking methodology that fairly distributes the cost of service among all customers. *See Seabrook Island Property Owners Ass'n v. S.C. Public Service Comm'n*, 303 S.C. 493, 499, 401 S.E.2d 672, 675 (1991); *also see Heater of Seabrook, Inc. v. Public Service Commission*, 332 S.C. 20, 25, 503 S.E.2d 739, 741 (1998). The Commission has wide-latitude to determine its methodology in setting rates and there can be no abuse of discretion where substantial evidence supports the finding of a just and reasonable rate. *Kiawah Island Property Owners Group v. The Public Service Comm'n of South Carolina*, 357 S.C. 232, 593 S.E.2d 148, n.5 (2004). The Intervenors have not challenged the ratemaking methodology employed in this case and the fact that Intervenors' charges will increase -- by any given amount -- is not evidence that would support a conclusion that the rate design is unjust or unreasonable. To the contrary, the Intervenors had the burden of demonstrating, by way of an analysis employing objective criteria, that the rate design adopted by the Commission was not fair. *See Utilities Services of South Carolina, Inc. v. South Carolina Office of Regulatory Staff*, 392 S.C. 96, 113, 708 S.E.2d 755, 765 (2011). The Intervenors' failed to carry this burden and have stated no reason in their Petition that the Commission should reconsider or rehear this issue. Third, the Intervenors' recitation of the impact upon them of the rate design approved by the Commission is both inaccurate and insufficient. As to the former, the Intervenors fail to recognize that the increase in the amount of their respective monthly bills arises principally from the increase in the number of Single Family Equivalents (SFEs) that are derived from the number of cars served by their drive-thru facilities – not the increase in the monthly service rate per SFE approved in Order No. 2013-660. The Intervenors were not being charged the correct number of

SFEs prior to the filing of this rate case and, as testified to by PUI witness Melcher, had the correct number of SFEs been applied to the Intervenors' previously, the amount of increase in monthly charges to them would have been the same as that for all other customers – i.e., 9%.[1] As to the latter, this paragraph of the petition fails to allege – much less demonstrate -- that the choice[2] of rate design by the Commission was the result of any factual or legal error. *Cf., Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 398, 520 SE2d 142, 155 (1999) ("[a]n abuse of discretion exists where the court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support"). Accordingly, the Commission properly exercised its discretion in this regard and no basis for rehearing or reconsideration exists.

2. Similarly, Paragraph 3 of the Petition fails to set forth any basis for rehearing or reconsideration. This paragraph fails to address the various issues associated with the adoption of an alternative rate design as enumerated by the Commission in Order No. 2013-660. *See, id.*, at 27 and n.11. Further, even assuming that the Intervenors could provide metered water usage data for their own accounts, that is irrelevant in a uniform rate design; given the Intervenors failure to demonstrate the existence of special circumstances or conditions warranting establishment of a rate specifically for them, the Commission was not obliged to consider this alternative simply for the benefit of the Intervenors. *See August Kohn, supra.* The Intervenors' contention that PUI had the burden of demonstrating the costs associated with the alternative rate

[1] Moreover, the evidence demonstrated that but for the concession made by PUI in the Settlement Agreement with the South Carolina Office of Regulatory Staff ("ORS") regarding the number of gallons attributable to cars served by fast food restaurants with drive-thru facilities, the monthly charges to Sensor Enterprises, Inc. and J-Ray, Inc. would have been $4,816.80 and $6,170.40, respectively. Thus, the settlement resulted in a reduction of approximately 70% in the rates that the Intervenors could have been charged if the number of gallons attributable to cars served had not been reduced under the terms of the settlement agreement.

design proposed by the Intervenors' is unsupported by any authority and contrary to the requirements of due process that place upon those proposing an alternative rate design (i.e., the Intervenors) the burden of demonstrating the reasonableness of that alternative rate design. Further, the assertion that the language of PUI's current rate schedule demonstrates that the alternative rate design proposed by the Intervenors is feasible is without merit. Nothing in the rate schedule addresses the bases for the Commission's finding that the alternative rate design is infeasible, so this portion of the petition fails to demonstrate any error on the part of the Commission. Moreover, this contention demonstrates that the Intervenors have failed to apprehend that the purpose of Section 12 of the PUI rate schedule is limited to providing the utility with a means of ascertaining whether the wastewater flow of a specific customer exceeds the design flow guidelines, not whether all customers are exceeding design flow guidelines. At best, this misinterpretation of the rate schedule provision suggests a non-uniform rate for the Intervenors to which they are not entitled for the reasons stated above.

3. Likewise, paragraph 4 of the Petition is deficient as it simply recounts testimony from witnesses and fails to assign any error to the Commission in rejecting this testimony in favor of other evidence of record.

4. Paragraph 5 of the Petition similarly fails to provide a basis for reconsideration or rehearing. The evidence regarding an "assumed strength of wastewater" first arose in the direct testimony of Mr. Russell on behalf of the Intervenors. This testimony acknowledged that strength of wastewater differs among customers and would be a necessary consideration in adopting the alternative rate design proposed by the Intervenors. Having raised the issue, the Intervenors cannot now complain about the Commission having addressed it. Further, PUI was not obligated to supply information regarding the strength of flow from the Intervenors'

individual restaurants as the burden of demonstrating the reasonableness and feasibility of an alternative rate design was upon the Intervenors, not PUI. Moreover, the Commission's decision is not based upon any assumed strength of flow, but on the testimony of the PUI witnesses – consistent with that of Mr. Russell -- that strength of flow was a consideration in the proposed alternative rate design that the Intervenors simply failed to address. Finally, the PUI witnesses made no assumptions regarding strength of flow, but pointed out that residential customers would have a lower strength of flow simply because they are not constantly cleaning their kitchens, cooking equipment, utensils, dining and sanitary facilities using commercial grade detergents to meet DHEC standards as are the Intervenors – testimony that the Intervenors did not refute by surrebuttal testimony.

5. Paragraph 6 of the Petition fails to specify the "notice" given to the Intervenors to which they refer or how any such notice had a bearing on the Commission's decision. Order No. 2013-660 reflects the fact that, consistent with law and the Commission's routine procedures, notice of intent to file the rate relief request was given in accordance with S.C. Code Ann. §58-5-240 and notice of the application was published in a newspaper of general circulation and provided to customers. No part of the Commission's order reflects that its substantive decision was based upon the fact of these notices; but certainly, the observation that the requisite notices were given is not an error.

6. Paragraph 7 of the Intervenors' petition is likewise without merit. The Intervenors confuse the obligation of the Commission to set just and reasonable rates in the context of exercising its discretion to adopt a rate design it finds to be appropriate and the obligation of the Intervenors' to demonstrate that an alternative rate design results in just and reasonable uniform rates for all customers. Only because the Intervenors proposed an alternative

rate design which would provide for themselves a non-uniform rate did the need arise for the Intervenors to demonstrate the effect on rates for other customers. The failure of the Intervenors to meet this burden is not error on the part of the Commission.

7. Paragraph 8 of the Petition reflects further confusion on the part of the Intervenors, but likewise demonstrates no basis for rehearing or reconsideration. The testimony to which PUI objected was that of an Intervenor witness regarding a rate which that Intervenor would pay under its alternative rate design proposal. This would not have resolved the Intervenors' failure to demonstrate the effect of their alternative rate design on all other customers. Moreover, the Intervenors sought to introduce this evidence on direct examination. The Intervenors were apprised of the Commission's requirements regarding the pre-filing of testimony, but did not comply with them in this respect. Accordingly, the sustaining of PUI's objection was proper. Finally, the Intervenors failed to make a proffer regarding this evidence, so no error may be predicated based upon the Commission's ruling. See Rule 103(a)(2), SCRE.

8. Paragraph 9, too, fails to demonstrate any error on the part of the Commission that establishes a basis for rehearing or reconsideration. Although it is correct that the witness for J-Ray, Inc. disputed the car count established by PUI and confirmed by ORS, he failed to provide the Commission with any basis upon which his alternative car count was made other than to state that it was an "actual number of cars served per day." Furthermore, J-Ray, Inc. did not offer any testimony in surrebuttal challenging the equivalent residential customer survey method used by PUI to make its car count for this customer (which the testimony showed was not based upon any assumptions) or demonstrating that the count was in fact incorrect. The Commission, as the finder of fact, was within its discretion to accept the testimony of the PUI witness, which it did. No error can result from this.

Based upon the foregoing, PUI requests that the Commission deny the Intervenors' petition for rehearing or reconsideration of Order No. 2013-660.

Respectfully submitted,

s/John M.S. Hoefer, Esquire
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